12-3-2015

State v. Pelland Respondent's Brief Dckt. 42554

IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,	)	
	)	No. 42554 & 42936
Plaintiff-Respondent,	)	
	)	Ada Co. Case No.
vs.	)	CR-2013-7623
	)	
VERNON CRAIG PELLAND,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE THOMAS F. NEVILLE
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

MARK W. OLSON
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
PLAINTIFF-RESPONDENT

ERIC D. FREDERICKSEN
Deputy State Appellate
Public Defender
P. O. Box 2816
Boise, Idaho 83701
(208) 334-2712

ATTORNEY FOR
DEFENDANT-APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTES

OTHER AUTHORITIES

STATEMENT OF THE CASE

Nature of the Case

Vernon Craig Pelland appeals from the judgment of conviction entered upon the jury verdict finding him guilty of grand theft by possession and from the district court's order relinquishing jurisdiction.

Statement of Facts and Course of Proceedings

In June 2013, Garden City Police Officer Tim Riley arrested Pelland on an outstanding misdemeanor warrant near the Veteran's Memorial Parkway bridge in Boise. (Trial Tr., p.205, Ls.22-25; p.208, L.9 – p.211, L.16.) At the time of his contact with Office Riley, Pelland possessed a shopping cart full of property. (Trial Tr., p.209, Ls.13-25.) Officer Riley took custody of the property for safekeeping in the Garden City Police Department evidence room. (Trial Tr., p.213, Ls.4-11.)

Later, Officer Riley and another officer took inventory of the items from Pelland's shopping cart. (Trial Tr., p.214, L.17 – p.215, L.15.) The officers recovered several identification cards that did not belong to Pelland and a box containing several hundred blank MoneyGram money orders. (Trial Tr., p.216, L.3 – p.226, L.22; see also State's Exhibits 1-8.)

Several days later, Garden City Police Officer John Brumbaugh interviewed Pelland at the Ada County Jail about the identification cards and blank money orders. (Trial Tr., p.295, L.10 – p.296, L.23; State's Exhibit 9.) Pelland admitted that he knew that the blank money orders were in the shopping cart. (State's Exhibit 9, 2:45 – 3:10; see also Trial Tr., p.325, L.24 – p.327, L.22.)

Pelland told Officer Brumbaugh that he had taken the money orders after his girlfriend left them behind when she moved away from the motel room they were living in. (State's Exhibit 9, 2:14 – 3:35; 6:38 – 6:55.)

The state charged Pelland with grand theft by possession (for the blank money orders) and misdemeanor petit theft (for the identification cards). (R., pp.63-64.) After a trial, the jury found Pelland guilty of both charges. (R., pp.98-99.) On the date of the sentencing hearing, the district court dismissed the misdemeanor petit theft charge.[1] (R., pp.100-101.) The court then imposed a unified 10-year sentence with two years fixed for grand theft by possession, but retained jurisdiction. (R., pp.104-107.)

At the conclusion of the period of retained jurisdiction, the Idaho Department of Correction recommended that the district court relinquish jurisdiction due to Pelland's failure to complete required programing. (PSI, p.101.[2]) The district court relinquished jurisdiction and ordered its original sentence executed. (R., pp.132-134.) Pelland filed timely notices of appeal from both the judgment of conviction and the district court's order relinquishing

---

[1] The district court's dismissal order does not contain a reason for the dismissal, and the appellate record does not contain a transcript of the sentencing hearing at which the charge was dismissed. (See R., pp.100-101.) However, after the jury returned its verdicts, the district court stated that it had "some concerns about the state of the evidence vis-à-vis Count II" (the misdemeanor petit theft charge), and that it might consider dismissal of that charge. (Trial Tr., p.407, Ls.15-25.)

[2] "PSI" page numbers correspond with the page numbers of the electronic file "Pelland 42554 psi.pdf." This file contains Pelland's presentence investigation report, amended presentence investigation reports, and other documents associated with the underlying case.

jurisdiction. (R., pp.109-113, 135-137.) The Idaho Supreme Court consolidated these cases for appeal. (3/5/15 Order.)

ISSUES

Pelland states the issues on appeal as:

1. Should this Court vacate Mr. Pelland's conviction for grand theft by possession because there was insufficient evidence to support the conviction?

2. Did the district court abuse its discretion when it relinquished jurisdiction?

(Appellant's brief, p.4.)

The state rephrases the issues on appeal as:

1. Has Pelland failed to show that the evidence presented was insufficient to support his conviction for grand theft by possession?

2. Has Pelland failed to show that the district court abused its sentencing discretion by relinquishing jurisdiction?

ARGUMENT

I.
Pelland Has Failed To Show That The Evidence Presented Was Insufficient To Support His Conviction For Grand Theft By Possession

A. Introduction

Pelland contends that the state presented insufficient evidence to support his conviction for grand theft by possession. (Appellant's brief, pp.5-10) Specifically, Pelland contends that the state presented insufficient evidence to prove: (1) that the blank money orders were "money orders" pursuant to the language of the relevant statute and jury instruction; and (2) that the money orders were actually stolen. (Id.) A review of the record reveals that the state presented substantial competent evidence from which a rational trier of fact could conclude that Pelland committed grand theft by possessing stolen money orders.

B. Standard Of Review

An appellate court will not set aside a judgment of conviction entered upon a jury verdict if there is substantial evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Miller, 131 Idaho 288, 292, 955 P.2d 603, 607 (Ct. App. 1997); State v. Reyes, 121 Idaho 570, 826 P.2d 919 (Ct. App. 1992); State v. Hart, 112 Idaho 759, 761, 735 P.2d 1070, 1072 (Ct. App. 1987). In conducting this review the appellate court will not substitute its view for that of the jury as to the credibility of witnesses, the weight to be given to the testimony, or the reasonable inferences to be drawn from the evidence. Miller, 131 Idaho at 292, 955 P.2d at 607; State v. Knutson, 121 Idaho 101, 822 P.2d 998 (Ct. App. 1991); Hart, 112

Idaho at 761, 735 P.2d at 1072. Moreover, the facts, and inferences to be drawn from those facts, are construed in favor of upholding the jury's verdict. Miller, 131 Idaho at 292, 955 P.2d at 607; Hart, 112 Idaho at 761, 735 P.2d at 1072.

Questions of statutory interpretation are given free review. State v. Maidwell, 137 Idaho 424, 426, 50 P.3d 439, 441 (2002).

C. The Evidence Presented Was Sufficient To Support Pelland's Conviction For Grand Theft By Possession

In this case, the state presented substantial competent evidence from which a rational fact-finder could conclude both that the blank money orders were "money orders" within the meaning of the relevant jury instruction and I.C. § 18-2407(1)(b)(3), and that the blank money orders were, in fact, stolen.

1. The State Presented Sufficient Evidence That The Blank Money Orders Possessed By Pelland Were "Money Orders"

Idaho Code § 18-2407(1)(b)(3) provides that an individual commits felony grand theft where he commits a theft of property as provided by Idaho law, and when that property consists of an "order for the payment of money upon any bank." In this case, consistent with this statute, the jury was instructed that in order to find Pelland guilty of felony grand theft by possession as charged, the state was required to prove that Pelland "obtained, possessed, and/or withheld money orders." (R., p.77.)

It is axiomatic and long-established that a statute will be interpreted according to its plain language and that where the language is plain the court will not resort to principles of statutory construction. State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003); State v. McCoy, 128 Idaho 362, 365, 913 P.2d

578, 581 (1996). "When a statute is unambiguous, it must be interpreted in accordance with its language, courts must follow it as enacted, and a reviewing court may not apply rules of construction." State v. Wiedmeier, 121 Idaho 189, 191, 824 P.2d 120, 122 (1992) (citations omitted). In Verska v. Saint Alphonsus Regional Medical Center, 151 Idaho 889, 894-896, 265 P.3d 502, 507-509 (2011), the Idaho Supreme Court held that Idaho appellate courts do not have the authority to modify unambiguous statutes even when construing the statute as written would produce "absurd results."

When a statute is ambiguous, it must be construed to mean what the legislature intended it to mean. State v. Doe, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009). To determine that intent, the appellate court examines not only the literal words of the statute, but also the reasonableness of the proposed constructions, the public policy behind the statute, and its legislative history. Id. In determining the ordinary meaning of a statute "effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant." State v. Mercer, 143 Idaho 108, 109, 138 P.3d 308, 309 (2006).

The relevant jury instruction and I.C. § 18-2407(1)(b) utilize, respectively, the broad terms of "money order" and "order for the payment of money upon any bank." (R., p.77.) The plain meaning of these terms is inclusive and contemplates all *types* of money orders. Much like a blank check is a *type* of check, a blank money order is a type of money order. The broad and inclusive language provided by I.C. § 18-2407(1)(b)(3) and the relevant jury instruction does not exclude blank money orders, or blank checks, from its purview.

On appeal, Pelland compares the blank money orders he possessed to "the piece of plastic upon which a credit card is ultimately printed or the printer paper upon which a traveler's check is printed." (Appellant's brief, p.9.) Pelland's comparison is misguided. Unlike a blank money order or a blank check, a mere piece of plastic or page of printed paper upon which a credit card or traveler's check may someday be printed does not contain any of the features or characteristics that an ordinary person would associate with a "credit card" or "traveler's check." To the contrary, the blank money orders possessed by Pelland had the term "money order" printed directly on them, and contained many of the commonly-known features of money orders, such as a serial number, the name of the money order company, the name of the bank upon which the money order is paid, and visible authentication and security features. (State's Exhibit 8.) In this way, blank money orders are more similar to credit cards issued by a bank that have not yet been activated by the consumer than they are to raw pieces of plastic which have not yet been imprinted with credit card information. For these reasons, a blank money order is an "order for the payment of money upon any bank" within the plain meaning of I.C. § 18-2407(1)(b)(3), just like blank checks or unactivated credit cards are "checks" and "credit cards," respectively, within the plain meaning of that same subsection.

Further, to the extent that I.C. § 18-2407(1)(b)(3) and/or the relevant jury instruction are ambiguous with regard to whether blank money orders are "money orders," an analysis of the legislative intent behind the statute reveals that the legislature intended to include a broad range of financial instruments,

including blank money orders, in the I.C. § 18-2407(1)(b)(3) list of property covered by the grand theft statute.

Idaho Code § 18-2407(1)(b) provides numerous scenarios under which an individual who commits theft may be charged with felony grand theft. Prior to 2002, I.C. § 18-2407(1)(b)(3) provided that an individual who commits theft commits felony grand theft where the stolen property "consists of a credit card." See 2002 Idaho Sess. Laws, Ch. 326, § 1, p.917. In 2002, the Idaho legislature broadened I.C. § 18-2407(1)(b)(3) to include numerous additional financial instruments. Id. The amended subsection provides that "[a] person is guilty of grand theft when he commits a theft as defined in this chapter" and when:

> The property consists of a check, draft or order for the payment of money upon any bank, or a check, draft or order account number, or a financial transaction card or financial transaction card account number as those terms are defined in section 18-3122, Idaho Code[.]

I.C. § 18-2407(1)(b)(3).

The legislature's Statement of Purpose for this amendment provided:

> [T]he bill aims to include theft of checks or checking account numbers under the grand theft statute. Currently under Idaho Law, theft of checks would only amount to a misdemeanor in light of the fact that the actual value of checks themselves is under $1000.00. This legislation aims to increase the penalty for the theft of checks and/or checking account numbers to a felony.
>
> In recent years Idaho has seen a large increase in the theft and misuse of checks, financial transaction cards and/or just the associated account numbers. This legislation's intent is to address this type of theft and prevent the huge losses, which invariably occur when the thieves fraudulently use, sell or pass on to others the stolen checks, financial transaction cards or account numbers.

Statement of Purpose, RS 12157, S.B. 1495 (2002).

In light of the legislature's concern regarding the "huge losses" which "invariably occur" when financial instruments are stolen, there is no reason why the legislature would have intended to exclude blank money orders from the language of this subsection. As William Hart, MoneyGram's Director of Global Security and Investigations testified at Pelland's trial, the potential scope of fraud from the theft of blank money orders exceeds the potential scope of fraud from the theft of filled-in money orders. As Hart explained, this is because an individual who stole blank money orders could type any amount up to the maximum $900 limit for MoneyGram money orders and successfully obtain payment from individuals who may not be familiar with the security features of the order. (Trial Tr., p.256, L.5 – p.257, L.25; p.260, L.21 – p.263, L.23; p.267, L.22 – p.268, L.19.) Hart testified that this type of fraud has been committed with MoneyGram money orders. (Trial Tr., p.262, Ls.19-23.)

A blank money order is an "order for the payment of money upon any bank" within the plain meaning of I.C. § 18-2407(1)(b)(3). Further, to the extent that I.C. § 18-2407(1)(b)(3) is ambiguous, an analysis of the legislative intent behind the statute reveals that the legislature intended to include blank money orders in this language. Therefore, the state presented substantial competent evidence from which a rational fact-finder could conclude that the blank money orders possessed by Pelland were money orders.

2. The State Presented Sufficient Evidence That The Blank Money Orders Possessed By Pelland Were, In Fact, Stolen

Idaho Code § 18-2403(4) provides that a person commits theft when he possesses stolen property he knows to have been stolen or under such circumstances as would reasonably induce him to believe the property was stolen. In this case, consistent with this statute, the jury was instructed that the state must prove that the blank money orders were "in fact stolen." (R., p.77.) A review of the record reveals that the state presented substantial competent evidence from which a rational fact-finder could conclude that the blank money orders possessed by Pelland were in fact stolen.

MoneyGram employee William Hart testified that the blank money orders possessed by Pelland were flagged and reported as "lost or stolen" by Ace Cash Express, the authorized agent for the orders. (Trial Tr., p.266, Ls.16-25.) On appeal, Pelland emphasizes that Hart's testimony "only established that the [blank money orders] were lost *or* stolen." (Appellant's brief, p.9 (emphasis in original).) However, a reasonable jury could infer from circumstances surrounding Pelland's possession of the blank money orders that the orders were, in fact, stolen.

Blank money orders are not an ordinary consumer good that can be lawfully acquired or obtained by private individuals without authorization. Hart testified that the blank money orders are provided directly from MoneyGram to authorized agents who have passed background checks, and that the blank orders should only be possessed by authorized MoneyGram agents or employees. (Trial Tr., p.258, L.5 – p.259, L.5; p.265, L.17 – p.266, L.8; p.273, L.8

– p.274, L.10; p.287, L.19 – p.288, L.11.) Hart further explained how easily unauthorized possession of the blank money orders could result in fraud. (Trial Tr., p.256, L.5 – p.257, L.25; p.260, L.21 – p.263, L.23; p.267, L.22 – p.268, L.19.) According to this testimony, there is no lawful means by which an unauthorized individual, such as Pelland's girlfriend, could have acquired the blank money orders. Further, in the police interview that was admitted into evidence, Pelland told Officer Brumbaugh that his girlfriend had found the blank money orders on the premises of a Las Vegas grocery store which had closed down. (Exhibit 9, 5:05 – 5:50.) The jury could have reasonably inferred from this evidence that the blank money orders were "stolen" from the store by Pelland's girlfriend, within meaning of that term as utilized in the relevant jury instruction, and that Pellland, in turn, knew or should have reasonably known that the money orders were stolen.[3]

Finally, Pelland made statements to Officer Brumbaugh and to the jury at trial which indicated that he understood that he should not have possessed the blank money orders. Pelland told Officer Brumbaugh that he was mad at his girlfriend when he found out "what she did" (i.e., that she took the blank money orders). (State's Exhibit 9, 7:48 – 8:05.) Pelland testified that he knew that his girlfriend should not have possessed the blank money orders and that he

[3] Even if the jury inferred that the blank money orders had been "lost" at the grocery store by Ace Cash Express, an issue that Pelland did not attempt to raise during the trial, I.C. § 18-2403(2)(c) provides that an individual who "acquires lost property" commits theft when he knows the property to have been lost, knows the identity of the owner of the property, fails to take reasonable measures to restore the property to the owner, and intends to deprive the owner permanently of the property.

contacted his girlfriend's parents about the situation. (Trial Tr., p.335, L.17 – p.336, L.1.) A rational jury could infer from the evidence describing these circumstances of Pelland's possession of the blank money orders that the orders were, in fact, stolen.

Sufficient competent evidence was presented at trial whereby a rational fact-finder could conclude beyond a reasonable doubt that Pelland committed grand theft by possession by knowingly possessing blank money orders that were, in fact, stolen. This Court should therefore affirm Pelland's conviction.

II.
Pelland Has Failed To Show That The District Court Abused Its Sentencing Discretion By Relinquishing Jurisdiction

A. Introduction

Pelland contends that the district court abused its discretion when it relinquished jurisdiction and executed his original sentence. (Appellant's brief, pp.10-11.) However, because Pelland has failed to establish an abuse of discretion, this Court must affirm the district court's sentencing determination.

B. Standard Of Review

"Sentencing decisions are reviewed for an abuse of discretion." State v. Moore, 131 Idaho 814, 823, 965 P.2d 174, 183 (1998) (citing State v. Wersland, 125 Idaho 499, 873 P.2d 144 (1994)).

C. The District Court Acted Well Within Its Sentencing Discretion In Relinquishing Jurisdiction

The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984).

In this case, at the conclusion of the period of retained jurisdiction, the district court elected to relinquish jurisdiction and execute its originally imposed sentence. (R., pp.132-134; 1/26/15 Tr., p.6, L.16 – p.7, L.22; p.11, L.4 – p.12, L.1.) In making this determination, the district court referenced Pelland's poor rider performance, criminal history, and risk to-reoffend. (1/26/15 Tr., p.6, L.13 – p.7, L.22; p.11, L.4 – p.12, L.1.) A review of the record supports the district court's determination.

Pelland did not effectively take advantage of the opportunity given to him by the district court to participate in retained jurisdiction programming. The APSI reflects that Pelland "started his program by making negative statements about the justice system and programming," and that during orientation Pelland stated that he was "a victim of the system and his judge." (PSI, p.103.) It took almost two months for Pelland to "stop making victim statements and start looking at his part in his incarceration." (PSI, p.104.)

While Pelland's rehabilitative efforts improved after several months in custody, Pelland was then removed from programming after he received a disciplinary sanction for willingly engaging in mutual combat with another inmate. (PSI, pp.103, 105.) Pelland both sustained and inflicted minor injuries during the incident. (PSI, p.103.) Following this incident, the Department of Correction concluded that Pelland's "actions were dangerous" and that he was "not ready to make lasting changes and self[-]regulate at the level required." (PSI, p.105.)

The district court's decision to relinquish jurisdiction and to execute its originally imposed sentence is also supported by factors considered by the court in its original sentencing determination. Pelland has a significant prior criminal history. He has been charged with misdemeanor domestic battery twice. (PSI, pp.4-5.) The first domestic violence charge, in which the victim accused Pelland of striking her in the face, pulling a knife, and threatening to cut her, was dismissed after Pelland completed community service and counseling requirements. (PSI, pp.4-5, 45, 47.) The second domestic violence charge, which was brought after Pelland struck his girlfriend in the face with a closed fist, resulted in a conviction for misdemeanor domestic battery. (PSI, pp.4-5, 45, 48.) In another case, Pelland was charged with simple misdemeanor battery and pled guilty to an amended charge of disturbing the peace. (PSI, p.4.) Pelland also has misdemeanor convictions for possession of drugs and possession of drug paraphernalia. (PSI, p.5.) Additionally, a charge for misdemeanor petit theft was dismissed after Pelland was ordered to pay restitution. (PSI, p.4.)

Prior to his original sentencing, the presentence investigator observed that Pelland "appears to have a history of difficulty controlling his emotions," and "did not express remorse for his actions with regard to the instance offense." (PSI, pp.16-17.) Pelland was assessed as having a "High Potential for Recidivism" on the LSI-R. (PSI, pp.14-16.) Further, while he was incarcerated in the Ada County Jail pending his sentencing in the present case, Pelland received a disciplinary sanction for attempting to conceal administrated medication in his hand rather than taking it. (PSI, pp.7, 32.)

The district court considered all of the relevant information and reasonably decided to relinquish jurisdiction and execute its originally imposed sentence. Given any reasonable view of the facts, Pelland has failed to establish that the district court abused its discretion.

CONCLUSION

The state respectfully requests this Court to affirm Pelland's conviction for grand theft by possession and the district court's order relinquishing jurisdiction.

DATED this 3rd day of December, 2015.

MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of December, 2015, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by causing a copy addressed to:

ERIC D. FREDERICKSEN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in the State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

MARK W. OLSON
Deputy Attorney General

MWO/dd